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ABSTRACT

Analyses of state policy regarding the impact of age provisions of P.L. 94-142, the Education for All Handicapped Children Act, on eligibility at preschool and postschool levels were conducted. Changes were found (compared to a 1973 survey) in 28 states, including 10 states with expanded eligibility and 18 with narrowed eligibility statutes. The majority of changes indicated a negative trend in state policies supporting programs at both the older and younger age ranges. Tables list the major findings, identifying states that have lowered and raised their statutory minimum and maximum ages. Also included is a chart listing ages of eligibility specified in regulations and state plans. Among policy issues raised is the need to examine levels of policy operating within states and reasons behind state policy changes in eligibility ages. (CL)

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A COMPREHENSIVE ANALYSIS OF STATES' AGES OF ELIGIBILITY POLICIES FOR SPECIAL EDUCATION: ISSUES AND IMPLICATIONS FOR POLICY DEVELOPMENT

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A Publication of the
Policy Options Project

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Introduction

One purpose of The Education for All Handicapped Children Act (P.L. 94-142) is to assure that all handicapped children have available to them, within specific time periods, a free appropriate public education which emphasizes special education and related services to meet their unique educational needs (20 U.S.C. 1401). P.L. 94-142 regulations require that each Annual Program Plan (APP) must include in detail the policies and procedures which a state will undertake or have undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the state not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the state not later than September 1, 1980 (§ 121a.122(a)).

There is, however, an exception contained in both the federal statute and regulations. The requirements for timelines and ages of eligibility do not apply to a state with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with state law or practice, or the order of any court, respecting public education for one or more of those age groups in the state (20 U.S.C. 1412(2)(B).

To determine the impact of P.L. 94-142 age provisions at the state level, the Policy Research Center at The Council for Exceptional Children, under the aegis of the Policy Options Project (POPs), conducted analyses of states' statutes as of May 1, 1980, states' Board of Education Regulations for special education, and the Annual Program Plans relative to ages of eligibility for special education. The eligibility data, which were compiled, were compared to a similar study conducted by Abeson and Trudeau in 1973. The intent of this Policy Options Project Paper is to present research findings to indicate general trends in policy development and/or adaptation on a state level, to display the aggregated data in such a manner as

to enable policy makers to compare states' ages of eligibility for special education policies, and to identify policy issues in need of further research as a result of this initial investigation. Two additional policy options papers have been developed by the Policy Options Project in the specific areas of providing appropriate early intervention services for very young handicapped children and their families (Smith, 1980) and in assuring the delivery of continuing education programs for handicapped persons (POPs Staff, 1980).

Research Findings

Changes were found in the laws of 28 of the 50 states. Ten states expanded their policy to include handicapped children in the preschool and "over 18" age ranges, while 18 states narrowed their policies eliminating many children in these age groups. The study did not explore the relationship between these changes in state policy and the actual delivery of services to handicapped students. Nor did it compare the age policies for nonhandicapped students with these data. Twenty-three states have not changed their mandates since the passage of P.L. 94-142 and seven states were eliminated in the analysis because the data from the sources used were not comparable.

The majority of changes reveal a negative trend in state policies supporting programs at both the younger and older age ranges. Although in some cases state policy for preschool handicapped children appears to have broadened as a result of federal policy, such a causal relationship cannot be fully established. In other cases, such as Missouri and West Virginia, policy for young handicapped children appears to be the beneficiary of a general increase in state kindergarten programs. That is, handicapped children in these states may now attend school from the age of five, not because state policy toward early childhood for handicapped students has changed, but because states have mandated kindergarten programs for all children in the state.

With respect to handicapped youth and young adults, this negative trend is reflected in three states lowering their ages from 21 to 18. Three other states that previously allowed services beyond age 21 under certain conditions have eliminated such provisions. Michigan with its 0-25 age range has the most inclusive age eligibility policy according to the study, while two states, Florida and Oklahoma, have no statutorily established maximum age for the provision of special education services. In Oregon, the state superintendent has legal authority to determine age of eligibility, a unique provision.

Of particular interest are the changes reported in state policy regarding permissive ages of eligibility. Some states have changed their preschool and 18 to 21 policies from mandatory to permissive, while other states have expressly written in permissive age ranges where none previously existed. The impact of such permissive policy upon the actual delivery of services to children depends on a number of factors and may be underestimated, according to the report. In some states, such as North Dakota, states will reimburse districts from general revenues, special revenues, or both, for programs provided to handicapped children falling in the permissive age range. Federal money may also flow through if requirements are met. In other states, such as New Hampshire, permissive means that child find takes place and the children are identified during the permissive service period to facilitate service delivery when the mandatory age is reached. In this case the state would pay for identification but not for programs. Any programs and services delivered to children not mandated to be served are at local expense.

TABLE I

I. States that have Lowered their Statutory Minimum Age* (N=7)

State	1973	1980
Iowa	5-21 (conditional to 24)	under 21
Maryland	6-18	birth through 20
Minnesota	4, 5, or 6-21	4-21 (lowered for MR & ED)
Missouri	6-21	5 and under 21 (P below 5)
Nebraska	5-21	from diagnosis to 21
New Hampshire	4 or 5-21	3 to 21/C (P 0-3)
West Virginia	6-21 (3-6 permissive)	between 5 and 23 (P 3-5)

*In addition, four states (Arkansas, Illinois, Louisiana, and North Dakota) added permissive language.

TABLE II

II. States that have Raised Statutory Minimum Ages (N=12)

State	1973	1980
Arizona	5-21	6-21 (5 if K)
Florida	from 3	from 5 (0-4 P)
Georgia	3-18	6 to C (5 if K; 0-4 P)
Idaho	to 21 (lower limit abolished by law)	5-21
Indiana	3-21	over 6 and under 18 (3-5 P HI from 6 mo.)
Kansas	birth-21 (conditional to 24)	6-21/C (5 if K)
Mississippi	birth-21	6 and under 21 (under 6 P)
Montana*	birth-25	between 3 and 21 inclusive (9/1/80) (0-2 P)
Nevada	3-21	5 or 6 and under 18
North Carolina	birth to adulthood	between 5 and 18 (under 5 P)
Ohio	5-21	6-18 (5 if K)
Wisconsin	birth-21	3 and under 21 (under 3 P)

*Montana policy varied according to handicap in 1973. The majority were eligible birth-25.

TABLE III

III. States that have Raised Statutory Maximum Ages* (N=3)

State	1973	1980
Georgia	3-18	6 through C
Maryland	6-18	birth through 20
West Virginia	6-21	between 5 and 23

*Since the 1980 data were collected, both Maryland and Louisiana passed laws extending special education to 25 under certain conditions.

TABLE IV

IV. States that have Lowered Statutory Maximum Ages (N=6)

State	1973	1980
Indiana	3-21	over 6 and under 18 (18-21 P)
Iowa	5-21 (conditional to 24)	under 21 (no extensions)
Kansas	birth-21 (conditional to 24)	6-21/C (no extensions)
Montana	birth-25	between 3 and 21 inclusive (9/1/80)
Nevada	3-21	5 and under 18
Ohio	5-21	between 6 and 18

TABLE V

V. State Statutory Ages of Eligibility Unchanged Since 1973 (N-23)

Alabama (6-21)	Maine (5-20)	South Carolina (5-21)
*Arkansas (6-21)	Massachusetts (3-21)	South Dakota (birth-21)
Connecticut (5-21/C)	Michigan (0-25)	Tennessee (4-21)
Delaware (4-21)	New Jersey (5-20)	Texas (3-21)
Hawaii (birth-20)	New Mexico (5-21)	Utah (5-21)
*Illinois (3-21)	*North Dakota (6-21)	Vermont (birth-21)
Kentucky (birth-21)	Oklahoma (4-no maximum)	Virginia (2-21)
*Louisiana (3-21)	Rhode Island (3-21)	

*These states specifically added permissive language at the preschool level, but no change in mandate occurred.

TABLE VI

VI. Comparisons not made (N=7)

Changes in statutory language in the following states could not be determined due to variations and exceptions in provisions or because the term "legal school age" was not defined in the 1973 report making comparisons impossible.

Alaska	Pennsylvania
California	Washington
Colorado	Wyoming
New York	

Key: P = Permissive
C = Completion of Course

Ages of Eligibility for Special Education

In addition to including the ages of eligibility for special education contained in state statutes as of May 1, 1980, the following chart also indicates the ages of eligibility specified in "State Board of Education Regulations for Special Education" and the "Annual Program Plans" required under Part B of P.L. 94-142. Whenever possible, the chart directly quotes the text of the document from which it was taken. It should be pointed out, however, that this language often appears not only to be inconsistent from state to state, but from policy document to policy document as well.

Ages of Eligibility for Special Education
May 1, 1980

State	Law		Regulation		State Plan	
	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages
Alabama	Between 6 and 21			Preschool	6 through 21	3 - D, B, MH
Alaska	At least 3		Legal school age 3 to 19		3 to 19 inclusive	
Arizona	Lawful school age[1]				Between 6 and 21 If K - 5	
Arkansas	Between 6 and 21 If K - 5	Below 6 if SHC			6 and 21 If K - 5	Below school age if SHC
California	Between 3 and 21 C	Younger than 3	4.9 to 21 C	Birth to 4.9[2]	4.9 to 18 with exceptions[3]	Under 3
Colorado	Between 5 and 21	Under 5			Between 5 and 21 C	3 -5
Connecticut	Over 5 under 21	Under 5	School age and preschool		HI - 3 to 21st birthday or C - All others 4 to 21st birthday or C	
Delaware	4 through 20 inclusive		Between 4 and 21 HI & VH - 0 to 21		Between 4 and 21	
Florida*	5	Exceptional children-3 Below 5 D,B Severely PH TMR			13 consecutive years of instruction 5 - 18	0 to 4 18 and above
Georgia	6 to C if K - 5[4]	0 - 5 if SHC necessitates early intervention	Between 5 and 18	0 - 4 If enrolled can continue 19-21	5 to 18	0 to 4 19 to 21
Hawaii	Under 20				9/1/80 Between 3 and 20	
Idaho	School age[5]	To 21	School age Between 5 and 21		Between 6 and 18 inclusive, If K - 5, if 18 and has not graduated through 21	Between birth and 4 or 5 inclusive
Illinois*	Between 3 and 21	0 to 2	Between 3 and 21		9/1/80 Between 3 and 21	
Indiana	Over 6 and under 18	D - 6 mo. 3 to 5 18 to 21	6 to 18	3 through 5 HI - 18 through 21 6 mo.	6 to 18	
Iowa	Under 21		Between birth and 21		9/1/80 Birth through 20	
Kansas	Subject to regulations school age[6]		If K then 5 through 21 C, otherwise 6 through 21 C		Same age as nonhandicapped to school year student reaches 21	Preschool
Kentucky	Under 21		School attendance age persuant to law		5 through 17	Birth to 4 18 to 21

Table continued on following page.

State	Law		Regulation		State Plan	
	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages
Louisiana	3 to 21[7]	Below 3 - Serious handicapping condition	3rd birthday to 22nd birthday		Not less than 3 or more than 21 inclusive	SHC - under 3
Maine	5 to school year student reaches 20. If 2-year K, 4		5 to school year student reaches 20		5 until year reaches 20	
Maryland	As soon as child can benefit and under 21[8]		Birth through 20 - children under 5 will be phased in as required by law		9/1/80 Birth through 20	
Massachusetts	3 through 21		3 through 21 - 3 and 4 year olds must have substantial disabilities[9]		3 through 21	
Michigan	Under 26		Not more than 25 - if turns 26 after enrollment, may complete year		0 through 25 C	
Minnesota	4 to 21	TMR-through school yr. student is 25, if attended public school less than 9 years.	4 to 21		4 to 21	Before 4
Mississippi	6 and under 21	Under 6	Under 21		9/1/80 6 through 20	3 to 5
Missouri	5 and under 21	Under 5	School age	3 and 4	5 through 20	Under 5
Montana	9/1/80 Between 3 and 21	9/1/80 0 to 2	9/80 between 3 and 21		9/1/80 Between 3 and 21 inclusive	0 to 2
Nebraska	From diagnosis to 21		5 to 21 (school age) MH - birth to 21 C		From diagnosis to 21	
Nevada	5 and under 18	MR - 3 C -4 D & VH - under 5			5 or 6 to 18	Outside eligible age range
New Hampshire	3 to 21 C		Up to 21		3 to 21	0 to 3
New Jersey	Between 5 and 20	Under 5 and over 20	Between 5 and 20	Under 5 and over 20	Between 5 and 20	
New Mexico	School age[10]		Legal entry age until age 18	Over 18		
New York	Over 5 and under 21		Under 21		Between 5 and 21[11]	
North Carolina	Between 5 and 18		5 through 17	Birth through 4 18 through 21	Between 5 and 17	Birth to 4 18 to 21
North Dakota	6 and under 21	3 to 6	6 to 21		6 to 21	3 to 6
Ohio*	Between 6 and 18 If K - 5	Other ages	Legal school age		Compulsory school age	
Oklahoma	4		4 eligible for a minimum of 12 years[12]		4 through 18 minimum period of 12 years	19 to 21

Table continued on following page.

State	Law		Regulation		State Plan	
	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages	Ages of Eligibility	Permissive Ages
Oregon	Superintendent establishes eligibility		6 to 21 inclusive If K 5 to 21 If preschool 3 to 21		6 through 20 If K - 5	
Pennsylvania	6 to 21	Below 6	6 to 21 below 6 if regular programs below age 6		Policy is same as regulations and law	
Rhode Island	3 to 21		3 to 21 C		9/1/80 3 to 21	
South Carolina	Lawful school age[13]				Between 6 and 21 HI 4 to 21	
South Dakota	Under 21		Under 21[14]		Under 21	
Tennessee	Between 4 and 21	D - 3	4 through 21 D - 3		4 through 21 D - 3 through 21	
Texas	Between 3 and 21		Between 3 and 21 inclusive. Auditorily, visually handicapped - between birth and 22		Between 3 and 21. Auditorily, between birth and 22	
Utah	Over 5 (if K) under 21		5 through 21		5 through 21	
Vermont	Under 21	Over 21 to C	Under 21		6 to 21 C If K - 5	3 to 5
Virginia	2 and under 21 VH - birth to 21		2 to 21		Between 2 and 21	
Washington	Common school age[15]	Preschool	5 to 21[16]		5 to 21 common school age	3 to 4[17]
West Virginia	Between 5 and 23	3 - 5	Between 5 and 23		Between 5 and 23	
Wisconsin	3 under 21	Under 3	3 to 21		3 to 21	
Wyoming	Over 6 and under 21 If 5 - K		School age		Between 6 and 21 If K - 5	
District of Columbia			Between 3 and 21		9/1/80 Not less than 4 or more than 21. 4 year olds when provided to regular children	

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Prepared by the
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Key, footnotes, and comments on following page.

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KEY

K - Kindergarten
C - Completion of Course
D - Deaf
B - Blind

PH - Physically Handicapped
TMR - Trainable Mentally Retarded
HI - Hearing Impaired
VH - Visually Handicapped

MH - Multiple Handicap
MR - Mentally Retarded
G - Gifted
SHC - Serious Handicapping Condition

FOOTNOTES

[1]Arizona - Lawful school age is between 6 and 21.

[2]California - 3-4.9 identified as requiring intensive special education.

[3]California - Exceptions include: 3-4.9 for those identified as requiring intensive services; 19-21 if enrolled before 19 and have not yet completed a course.

[4]Georgia - 3 and 4 year old children who are physically, mentally, or emotionally handicapped or perceptually or lingustically deficient are eligible.

[5]Idaho - Services of public schools are extended to any acceptable person of school age (defined as between 5 and 21).

[6]Kansas - school age is 6 or 5 if kindergarten is available.

[7]Louisiana - Legislation has been passed extending eligibility to 25 in certain circumstances.

[8]Maryland - Effective 7/1/80 Senate Bill No. 734 provides for compensatory education over 21 in certain circumstances.

[9]Massachusetts - Substantial disabilities are defined as intellectual, sensory, emotional or physical factors, cerebral disfunctions, perceptual factors or other specific learning impairments or any combination thereof.

[10]New Mexico - School age is at least 5 and for children in special education a maximum of 21 years of age.

[11]New York - Blind, deaf, or severely physically handicapped children in state schools between 3 and 21; deaf children less than 3 years of age in approved educational facilities.

[12]Oklahoma - No set minimum age is specified for blind and partially blind, deaf, hard of hearing, or low incidence severely multiple handicapped children.

[13]South Carolina - Lawful school age is over 5 and under 21.

[14]South Dakota - Programs for children under the age of 3 years shall be provided only to those children who are in need of prolonged assistance.

[15]Washington - Common school age is between 5 and 21.

[16]Washington - 0 to 1 and 1 and 2 year old children with multiple handicaps, gross motor impairment, sensory impairment, moderate or severe mental retardation are eligible for services.

[17]Washington - Services are permissive for children 0-2 if they have a multiple handicap, gross motor impairment, sensory impairment, or moderate or severe mental retardation.

COMMENTS

*Florida - According to Florida State Department of Education officials, there is no maximum school age.

*Ohio - According to Ohio State Department of Education officials, Ohio's mandated age range is 5 through 21.

*Illinois - Permissive ages are listed in § 10-22-38 rather than in Special Education Law.

General Trends Within States' Ages of Eligibility for Special Education

The data were analyzed to determine whether services are provided to exceptional students below the age of five and over the age of 18. The study found that five states currently do not have provisions for the education of exceptional children below the age of five. Twenty-one states, on the other hand, indicated in at least one of their three policy documents that services are to be provided, and sixteen states specified that such services are permissive. Nine states were found to have what appears to be conflicting policy statements. For example, the Connecticut statutory provision specifies services to children under five are permissive, while their regulation indicates that "preschool" will be provided. Their state plan further specifies that hearing impaired children are eligible for services at age three and all other handicapped children are eligible at age four.

Provisions for the education of exceptional students over the age of 18 appear to be permissive in seven states. Forty-two states specify that services will be provided to exceptional students over the age of 18 and two states (Kentucky and North Carolina) appear to have conflicting policies. Every state, however, according to its written policy specified within at least one of these three documents, provides some type of provision for exceptional students over the age of 18. (As a point of clarification, an exceptional student over the age of 18 is not eligible for services indefinitely. Generally, the student becomes ineligible at the age of 21, 23, or 25, depending on the state's policy.)

Due to these inconsistencies, a number of states were surveyed to determine their use of the terms "between" and "to." In general, the term "between" indicates that the upper age specified is actually the birthday on which the person reaches that age. States indicated, however, that the student is usually allowed to complete the school year rather than actually leaving school on the birth date.

Ages of eligibility for special education are defined as the actual ages that exceptional children are qualified to participate in special education. Permissive ages are ages at which it is optional for special education services to be provided to exceptional children. While some states do include permissive ages in their policy, it was found that funding for services to children of those ages may not necessarily be available from the state.

Policy Issues Raised by the Research

Among the issues raised by this initial investigation and in need of further research and development are the following:

(1) There is a need to examine more closely the relationship between policy and practice. States with permissive legislation may actually be serving just as many handicapped children as do states with mandates.

(2) There is a need to examine the levels of policy operating within states. The relationship of law to regulation and state plan needs to be determined and the degree of coherence and difference explored.

(3) There is a need to examine the upper age levels in state policy in relation to what constitutes completion of high school. Although state age eligibility may extend education to 21, because of graduation policy, no students may in fact be attending school beyond age 18.

(4) There is a need to examine the reasons behind changes in state policy regarding ages of eligibility. The degree to which federal policy is motivating states needs to be explored and other determining factors identified.

Concluding Observations

The above analysis of state policies has confirmed that a number of states have cut back their age policies for special education. More states have reduced the number of years a handicapped student is eligible to receive special education

than have increased this age span. Early childhood policies have suffered more than those effecting the "over 18" population, although previous gains covering both age ranges made in the last two decades have been lost.

Project staff cautions that the rules, regulations, and state plans of each state at times interpret its laws more narrowly and less inclusively than the laws would otherwise indicate.

Since state policies are continually undergoing change, the documents used for this study may not necessarily reflect the most current policies in effect. Readers are encouraged to study the data and to contact their state education agencies for further interpretation. Finally, it should be emphasized that the data compiled were based on state policy analyses and not on actual practices.

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